

Message

From: Minter, Douglas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0C1A47CA3AE847E2B7B818DA4734D7FD-MINTER, DOUGLAS]
Sent: 1/24/2018 6:20:16 PM
To: Chin, Lucita [Chin.Lucita@epa.gov]
CC: Shea, Valois [Shea.Valois@epa.gov]
Subject: RE: Opinion piece on DB

Ex. 5 Attorney Client (AC)

From: Chin, Lucita
Sent: Wednesday, January 24, 2018 10:49 AM
To: Shea, Valois <Shea.Valois@epa.gov>; Minter, Douglas <Minter.Douglas@epa.gov>; Bahrman, Sarah <Bahrman.Sarah@epa.gov>; Sutin, Elyana <Sutin.Elyana@epa.gov>; Denawa, Mai <Denawa.Mai@epa.gov>
Subject: Opinion piece on DB

Ex. 5 Attorney Client (AC)

http://www.capjournal.com/opinions/columnist/the-curious-case-of-powertech-s-pending-application/article_1734ee4c-00d0-11e8-878c-3763445b72b3.html

The curious case of Powertech's pending application

• David Ganje

• 11 hrs ago

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Welcome! We hope that you enjoy our free content.

In this opinion piece I discuss the curious case of Powertech's pending application for injection wells as a part of its proposed South Dakota uranium mining operation. Powertech has applied for deep liquid waste disposal injection wells under Class V of EPA regulations. I

refer to these wells as liquid waste wells. Powertech's full application proposes two types of wells: 'liquid waste wells' into the Minnelusa aquifer and 'mineral extraction wells' into the Inyan Kara aquifer.

If an aquifer is a possible source of drinking water, EPA rules require that a formal decision be made on whether use of the aquifer for liquid waste disposal would affect drinking water sources. EPA rules are intended to prevent the movement of fluids into underground sources of drinking water. As the agency says, this protection applies to all permits. After a careful review the EPA may, under rules in effect since the 1980s, grant an 'aquifer exemption' if the injection will not harm, that is contaminate, the receiving aquifer. The rules of the EPA do not exclude liquid waste wells from this aquifer exemption process.

The Minnelusa is a major aquifer that encircles the Black Hills and spreads radially outward for some goodly distance. The aquifer also runs eastward under all of western South Dakota. Minnelusa groundwater in the immediate proposed project area is hard; and it is not used in the immediate project area for human purposes. Under EPA rules an underground source of drinking water is an aquifer or a portion of an aquifer which contains a sufficient quantity of ground water to supply a public water system and currently supplies drinking water for human consumption. The Minnelusa falls within this definition because a portion of the Minnelusa is an underground source of drinking water - even if water in the area of the proposed project is not used for consumption. The Minnelusa serves several domestic as well as municipal users such as the Green Acres Estates of Hot Springs, the Country Club Estates of Hot Springs and the city of Rapid City. EPA guidance states that under an aquifer exemption process, "a demonstration must be made that the waste will remain in the exempted portion."

In the Powertech proceedings the EPA adopted the aquifer exemption process for the Inyan Kara extraction wells but did not use it for the Minnelusa liquid waste wells. The agency issued a lengthy written 30 page aquifer exemption decision on Powertech's mineral extraction wells. And in further support of the exemption the agency researched and prepared a 35 page written supplement to the decision which analyzes the movement and quality of affected waters. In the written decision the agency analyzed possible exposure and risks to underground drinking water by the proposed mineral extraction wells. This decision included a review of whether "the waste will remain in the exempted portion." The EPA then conditionally granted an exemption permitting the use of mineral extraction wells. The EPA was in compliance when it made a decision to exempt the Inyan Kara mineral extraction wells. On the Minnelusa liquid waste wells rather than use the aquifer exemption process, the

EPA concluded the injection area for the wells “is not expected to be an underground source of drinking water.” (This is, effectively, the same conclusion the EPA reached for the mineral extraction wells. On the mineral extraction wells the agency said, “. . . the EPA has concluded that the portions of the Inyan Kara aquifers proposed for exemption do not currently serve as a source of drinking water.”) To follow the aquifer exemption process and grant an exemption for one set of Powertech wells but fail to follow the exemption process for another set of wells is incoherent. The EPA did not, in my view, follow existing regulations when it failed to use the rules for exempted aquifers concerning the proposed Minnelusa aquifer liquid waste wells. A permit might be issued if the EPA follows the rules and applies the established criteria for exempted aquifers. Rather than follow the exemption process for the Minnelusa liquid waste wells the EPA stated it would continuously monitor injectate liquid placed into the liquid waste wells. Further EPA permit conditions require that Powertech show that the injection zone does not supply any public water system or contain a sufficient quantity of ground water to supply a public water system. Powertech is also required to provide the agency with sample analysis quarterly and to keep injectate fluids below concentration thresholds for hazardous waste and radioactive waste.

I do not criticize these permit conditions for the liquid waste wells. Additionally, this opinion piece does not discuss whether aquifer exemptions are right or wrong. The issues I address in this piece are: 1.) the process taken by the EPA and 2.) any consequences to a water source. Whether or not Powertech requested an aquifer exemption for the Minnelusa aquifer, the rules require the EPA to investigate any risk under the aquifer exemption process. The EPA record shows there were no tests done by Powertech or the EPA on the aquifer in the immediate project area. An aquifer exemption review by the EPA with a written decision provides the public with some assurance that there will be no movement of fluids into possible sources of drinking water. A 2016 report on the EPA issued by the U. S. GAO found that the EPA has not consistently conducted oversight activities necessary to assess whether state and EPA-managed programs are protecting underground sources of drinking water.

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